

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7156

Petition of UPC Vermont Wind, LLC, for a Certificate of)
Public Good, pursuant to 30 V.S.A. § 248, authorizing the)
construction and operation of a 52 MW wind electric)
generation facility, consisting of 26 wind turbines, and)
associated transmission and interconnection facilities, in)
Sheffield and Sutton, Vermont)

Order entered: 5/18/2006

THIRD ORDER RE MOTIONS TO INTERVENE

Today's Order addresses ten intervention requests that were filed with the Public Service Board ("Board") in this Docket. Motions to intervene were filed by the Town of Burke ("Burke") on May 4, 2006, Donald W. Gregory on May 8, 2006, Michael and Marsha Burrington, the Town of Newark ("Newark"), the Town of Kirby ("Kirby"), Clean Power Vermont ("CPVT"), and Byron Savoy, on May 9, 2006, and John and Mary Pastore on May 10, 2006. Also, on May 9 and 10, 2006, respectively, the Towns of Sheffield ("Sheffield") and Sutton ("Sutton") filed requests to expand the scope of their previously granted intervention. The only parties to respond to these motions to intervene were the Department of Public Service ("Department") and UPC Vermont Wind, LLC ("UPC").

Today's Order does not address two other motions to intervene that have been filed: one by the Town of Westmore ("Westmore"), filed on May 8, 2006, and one by Clint and Mary Gray, filed on May 9, 2006. The Board is unable to rule on these intervention requests because they appear not to have been served on all parties.¹ Westmore's and the Grays' requests are discussed in a separate memorandum that is being issued concurrently with this Order.

In its comments on the intervention requests, the Department "recommends that the Board remind all intervening parties that testimony on technical issues must be presented by qualified witnesses capable of explaining and defending their positions both in their prefiled

1. Board Rule 2.204(A) requires a filing to be served on every party that has filed a notice of appearance.

testimony and during technical hearings" The Department's recommendation is appropriate, and we hereby remind all parties (not just intervenors) that testimony on technical issues must be presented by witnesses who possess appropriate qualifications to address those issues.

The Department also notes that it received certain of the intervention motions after the May 9 intervention deadline. The Department suggests that the Board remind parties that filings must be delivered to the Board by the scheduled date, absent an extension. We hereby remind all parties that, as the Department correctly notes, filings must be *received* by the Board by the filing deadline.

Burke

Burke contends that the proposed project "may adversely affect view sheds and view corridors in the Town of Burke, thus jeopardizing its natural resources." In addition, Burke expresses concern with the potential impact of the project on tourism, and consequently, the town's economy.

On May 10, the Department filed a letter stating that it has no objection to the Board granting permissive intervention to Burke for participation on the specific issues outlined in Burke's motion.

Burke is granted permissive intervention in this Docket, pursuant to Board Rule 2.209(B). Burke's participation is limited to addressing issues related to aesthetics and economic impact (including impacts on tourism).

Donald Gregory

Mr. Gregory is a landowner who lives on Norris Mountain. He contends that his "quality of life will be impacted because of the sound, blinking lights and the flickering of the blades on the turbines at sunset." Additionally, Mr. Gregory expresses concern with the potential impact of the proposed project on his property value, the recreational experiences of those who utilize the surrounding land for those purposes, and the headwaters of the area. Mr. Gregory closes by requesting that he have "full standing to participate in all phases of the case."

In a letter filed May 10, the Department states that it does not object to the Board granting Mr. Gregory permissive intervention for participation on the specific issues outlined in his motion. In a letter filed May 12, UPC states that it does not object to Mr. Gregory's participation.

Mr. Gregory is granted permissive intervention in this Docket, pursuant to Board Rule 2.209(B). Mr. Gregory's participation is limited to addressing issues related to aesthetics, economic impact, and headwaters.

Michael and Marsha Burrington

The Burringtons are landowners who live in Sheffield, near six of the proposed turbines. The Burringtons contend that the proposed project may have an adverse impact on their property value, the natural environment, public health and safety, and the orderly development of the region.

In a letter filed May 10, the Department states that it does not object to the Board granting the Burringtons permissive intervention for participation on the specific issues outlined in their motion. In a letter filed May 12, UPC states that it does not object to the Burringtons' participation.

The Burringtons are granted permissive intervention in this Docket, pursuant to Board Rule 2.209(B). Their participation is limited to addressing issues related to economic impact, the natural environment, public health and safety, and the orderly development of the region.

Newark

Newark asserts that the proposed project would be inconsistent with its town plan and seeks permissive intervention on the issues of orderly development, economic impact, and aesthetics and the natural environment. Newark contends that the proposed project would have a negative aesthetic impact on the town, and consequently, an impact on its tax base.

On May 10, 2006, the Department filed a letter stating that it does not object to Newark's intervention request for participation on the specific issues outlined in Newark's motion. On May 12, 2006, UPC filed a letter objecting to Newark's motion on the grounds that "it relies entirely on the claim that the Project is not consistent with the Newark Town Plan." UPC

contends that, because the proposed project is not located within Newark, the town plan is not applicable, and therefore Newark has not demonstrated a substantial interest in the Docket.

Irrespective of whether the Newark Town Plan is applicable to these proceedings, Newark has sufficiently demonstrated that the proposed project has the potential to impact the aesthetics, orderly development, and tax revenue of the town.² We grant Newark permissive intervention, pursuant to Board Rule 2.209(B). Newark's participation is limited to the issues of orderly development, economic benefit, and aesthetics. We are not allowing Newark to participate on other environmental issues as it has not demonstrated an interest in those issues sufficient to support intervention.

Kirby

Kirby contends that the proposed project would impact property values in the town and tourism, which could result in decreased revenues for the town. Additionally, Kirby asserts that the proposed project would impact orderly development and interfere with "the tranquil night skies and daytime vistas."

In a letter filed May 10, the Department states that it does not object to the Board granting Kirby permissive intervention for participation on the specific issues outlined in Kirby's motion.

UPC objects to Kirby's intervention request. UPC contends that Kirby has not established a substantial interest, given that most of the town is more than ten miles from the proposed project and that Kirby relies on compliance with its town plan to support its intervention.

For the same reasons that we granted permissive intervention to Newark, we grant Kirby permissive intervention in this Docket, pursuant to Board Rule 2.209(B). Kirby's participation is limited to addressing issues related to orderly development, aesthetics, and economic impact.

2. The Vermont Commission on Wind Energy Regulatory Policy issued a set of recommendations in December of 2004 that included a recommendation that the Board require notice of any proposed wind generation project to all towns located within a ten-mile radius. The Board has incorporated that recommendation into its proposed Rule 5.400. UPC provided notice to all towns located within a ten-mile radius of the proposed project. Thus, we conclude that there are sufficient public policy reasons to allow Newark the opportunity to present evidence that the proposed project would negatively impact the town.

CPVT

CPVT is a "non-profit grassroots organization founded by Vermonters who are actively advocating for wind power and renewable electricity sources in Vermont." According to its motion to intervene,

Clean Power Vermont and its members have a substantial interest in the outcome of this matter as wind power would provide local, regional and statewide benefits through a clean, safe and affordable electricity option. Wind power fits in with the rich tradition of a working landscape that has characterized Vermont for centuries while having a positive impact on the economy.

CPVT contends that it represents residents of Sheffield and surrounding towns who support the proposed project.

In a letter filed May 12, UPC states that it does not object to CPVT's participation. In a letter also filed May 12, the Department states that it has no objection to the Board granting CPVT permissive intervention with respect to the interests described in CPVT's motion.

CPVT is granted permissive intervention in this Docket, pursuant to Board Rule 2.209(B). CPVT's participation is limited to addressing issues related to 30 V.S.A. §§ 248(b)(1) (orderly development), (b)(2) (need), (b)(4) (economic impact), and (b)(5) (aesthetics and the natural environment).

Byron Savoy

Mr. Savoy is a landowner who's "homestead lies within both the 'viewshed' and the 'soundshed'" of the proposed project. Mr. Savoy contends that the aesthetic impacts from the proposed project would reduce his enjoyment of his home and result in economic harm.

On May 15, 2006, the Department filed a letter stating that it has no objection to the Board granting Mr. Savoy permissive intervention with respect to the interests described in his motion.

Mr. Savoy is granted permissive intervention in this Docket, pursuant to Board Rule 2.209(B). Mr. Savoy's participation is limited to addressing issues related to aesthetics and economic impact.

John and Marilyn Pastore

The Pastores "own and operate an historic farm estate known as the Inn at Mountain View Farm in East Burke." The Pastores contend that the proposed project would interfere with the orderly development of the region, have undue adverse impacts on aesthetics, historic sites, and the natural environment, and have negative economic impacts on their and other area businesses.

In a letter filed May 10, the Department stated that it does not object to the Board granting permissive intervention to the Pastores with respect to the interests described in their motion. On May 12, UPC filed a letter in which it objects to the Pastores' intervention on the basis that the Pastores' property is approximately 7.5 miles distant from the proposed project.

We conclude that, notwithstanding the Pastores' distance from the project site, they have demonstrated a sufficient interest that may be adversely affected by the outcome of this proceeding. Thus, the Pastores are granted permissive intervention in this Docket, pursuant to Board Rule 2.209(B).³ Their participation is limited to addressing the issues related to orderly development of the region, aesthetics, historic sites,⁴ the natural environment, and economic impact.

Sheffield

Sheffield requests that the Board expand its intervention to include the criteria of 30 V.S.A. §§ 248(b)(2) (need), (b)(3) (reliability), (b)(4) (economic benefit), and (b)(5) (aesthetics and the natural environment).

On May 11, the Department filed a letter stating that it has no objection to granting Sheffield permissive intervention on the issues identified in Sheffield's filing. In a letter filed May 12, UPC stated that it does not object to Sheffield's request for intervention on a broader scope of issues.

3. Although both John & Marilyn Pastore have been granted permissive intervention, Marilyn was the only person to sign the Notice of Appearance and, therefore, the only person authorized to make filings in this Docket.

4. In granting the Pastores intervention with respect to historic sites, we are not prejudging whether in fact the Pastores' farm is an "historic site" for purposes of 30 V.S.A. § 248(b)(5). In this proceeding the Pastores will need to present evidence to demonstrate that their farm qualifies as an "historic site."

We grant Sheffield's request, and accordingly we expand Sheffield's permissive intervention, pursuant to Board Rule 2.209(B), to include the criteria of 30 V.S.A. §§ 248(b)(2), (b)(3), (b)(4), and (b)(5).

Sutton

Sutton requests that the Board expand its intervention to include the following issues: aesthetics and scenic and natural beauty; the ability of the local government to provide municipal or governmental services; and development affecting public investments.

On May 10, the Department filed a letter stating that it has no objection to Sutton's request for expanded participation.

We grant Sutton's request, and accordingly we expand the scope of Sutton's permissive intervention, pursuant to Board Rule 2.209(B), to include the following issues: aesthetics and scenic and natural beauty; the ability of the local government to provide municipal or governmental services; and development affecting public investments.

SO ORDERED.

Dated at Montpelier, Vermont, this 18th day of May, 2006.

<u>s/James Volz</u>)	
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)	PUBLIC SERVICE
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)	BOARD
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)	OF VERMONT
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: May 18, 2006

ATTEST: s/Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us)